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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
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08/680,502 07/08/96 MILLER

T	P/1537-206
EXAMINER	

A3M1/0702  
OSTROLENK FABER GERB AND SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK NY 10036-8403

ART UNIT	PAPER NUMBER
MC CARTHY, M	6

1308  
DATE MAILED:

07/02/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

- ☒ Claim(s) 1-27 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-27 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

—SEE OFFICE ACTION ON THE FOLLOWING PAGES—

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miyanohara et al. in view of Komline and Applicants' disclosure at pages 10-11.

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Miyanohara et al. discloses the treatment of sewage sludge with magnesium hydroxide, lime and iron salt. The instant claims differ from Miyanohara et al. in the recitation that the sewerage or waste water includes at least one compound which can be reduced to form acid gas. Komline discloses that such compounds, typically sulfur-containing species and foul-smelling, are present in sewage and are treated by alkaline compounds such as calcium hydroxide. Thus the addition of the magnesium compound in Miyanohara et al. will inherently have the effect of reducing odors in a manner similar to the effect of the calcium hydroxide added in Komline. Thus, it is submitted that magnesium hydroxide would be an obvious substitute to the calcium hydroxide used in Komline, given the similarity in chemistry expected. The instant claims further differ from Miyanohara et al. in reciting that the source of the magnesium compound is a commercially available product known as "THIOGUARD". It is submitted that it would have been obvious to the person having ordinary skill in the art, at the time that the invention was made, to have used "THIOGUARD" in place of the composition disclosed in Miyanohara et al. Since it is known that "THIOGUARD" is used in water treatment applications to prevent the corrosive effects of sulfide ions, and since the Miyanohara et al. reference clearly discloses the utility in treating sewage sludges of compositions containing magnesium hydroxide and lime, such as would an aqueous slurry of "THIOGUARD". It is submitted that Miyanohara et al. discloses treatment with the magnesium compound to attain a pH of 9.0 or higher. It is submitted that the person having ordinary skill in the art would have found it obvious to have added pH within the ranges as instantly claims, including the 8.3 pH specifically claimed, in order to prevent the

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destruction of bacteria beneficial to the treatment of waste water or sewage. It is submitted that the person having ordinary skill in the art, at the time that the invention was made, would have found it obvious to have added an amount of magnesium effective to eliminate any detectable sulfide odor, as expressed in the ppm levels recited in the instant claims. For the foregoing reasons, it is submitted that the claimed invention, at the time that it was made, would have been obvious to the person having ordinary skill in the art over Miyano-hara et al. in view of Komline and Applicants' disclosure at pages 10-11.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil M. McCarthy whose telephone number is (703) 308-3842.

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June 23, 1997

A handwritten signature in cursive script, reading "Neil McCarthy".

NEIL MCCARTHY  
PRIMARY EXAMINER  
GROUP 1300